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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. ~~824~~ 70-22

M.F.A. CENTRAL COOPERATIVE, ET AL., *Petitioners*

v.

EDWIN O. BOOKWALTER, District Director of Internal Revenue

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

REPLY BRIEF FOR PETITIONERS

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March, 1971

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REPLY BRIEF FOR PETITIONERS

On October 9, 1970, petitioners filed a petition for certiorari in this case, pointing out the square conflict between the decision of the Eighth Circuit herein and the decisions of the Fifth Circuit in *Mississippi Chemical Corporation* v. *United States*, 431 F. 2d 1320, 70-2 U.S.T.C. ¶ 9601 (Sept. 14, 1970), and of the Court of Claims in *Penn Yan Agway Cooperative, Inc.* v.

United States, 417 F.2d 1372 (1969). All of these cases involve the tax treatment of required purchases, by borrowers from a Bank for Cooperatives, of Class "C" stock of such Banks. In a Memorandum filed December 8, 1970, the Government acknowledged the conflict, and joined in urging that the petition be granted.

On December 10, 1970, the Government filed a protective petition for certiorari in *Mississippi Chemical* (No. 1082), suggesting that action thereon be deferred and that the case be disposed of on the basis of the decision in *M.F.A. Central*. On January 11, 1971, the taxpayer in *Mississippi Chemical* filed a response denying the existence of a conflict, but asserting its right to be heard if certiorari were granted, and stating that it would be unjust to have the issue decided on the basis of the *M.F.A. Central* case with no opportunity for Mississippi Chemical Corporation to be heard. The Government filed a reply brief on January 20, 1971, stating that the basic issue in all three cases is the same.

On February 22, 1971, this Court granted certiorari in *Mississippi Chemical* (No. 1082), but took no action in the present case, *M.F.A. Central* (No. 824), although the *M.F.A. Central* case was the earlier of the two cases. Apparently, the Court intends to dispose of the common issue on the basis of its decision in *Mississippi Chemical*.

Petitioners strongly urge the Court to grant certiorari in the present case and to set it for argument together with *Mississippi Chemical*, allowing M.F.A. Central Cooperative fifteen minutes for oral argument and increasing by fifteen minutes (to a total of 45)

the time allowed the Government in the two cases. Alternatively, petitioners move the Court to grant them the right to file a brief *amicus curiae* and to argue orally for fifteen minutes in that capacity, again increasing the total time granted the Government by the same amount.

The relief requested would not deprive petitioner in *Mississippi Chemical* of any of its allotted time for oral argument; and it would add no more than thirty minutes to the total time allocated for oral argument. Moreover, we respectfully submit, it would ensure that the basic legal issue common to the two cases would be argued pro and con without over-emphasis on factual distinctions, which, in our opinion, are not important to that basic issue.

The Solicitor General has authorized petitioners to state that the Government has no objection to the relief requested herein. The attorneys for Mississippi Chemical Corporation have authorized us to state that they have no objection to petitioners' participation in the *Mississippi Chemical* case as *amicus curiae*, including oral argument as requested above.

Respectfully submitted,

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